HOUSE BILL NO. 717: BILL TO RATIFY WATER RIGHTS COMPACT BETWEEN STATE OF MONTANA and UNITED STATES FISH AND WILDLIFE SERVICE for the BOWDOIN NATIONAL WILDLIFE REFUGE

INTRODUCTION

Since 1995, the Montana Reserved Water Rights Compact Commission (RWRCC) and the United States Fish and Wildlife Service (FWS) have been in active negotiations concerning federal reserved water rights for the Bowdoin National Wildlife Refuge (the Refuge), located just east of Malta, Montana. The parties have now reached a settlement (Compact) to present to the Legislature.

BACKGROUND

Bowdoin National Wildlife Refuge, located in Phillips County near Malta, was established in 1936 and expanded in 1940 to be a refuge and breeding ground for migratory birds. The 15,551-acre Refuge is utilized by nearby communities as an environmental education resource and generates tourist dollars through wildlife viewing and hunting activities. The Refuge sits in a low-lying wetland alongside the floodplain of Beaver Creek. Historically, these lands were fed by large floods that spilled out of the banks of Beaver Creek. With the development of the Milk River Project, these lands began to receive irrigation return flows from the Project along with some direct deliveries via the Dodson Canal. Diking installed after the creation of the Refuge reduced the ability of the Refuge lands to receive flood flows from Beaver Creek. At the same time, water development upstream has contributed to a reduction of Beaver Creek flows, further diminishing the supply of water available to the Refuge. In the early years of the Refuge, FWS managers tried to conserve their water supply by limiting the volume of water released from the Refuge, causing a buildup of salts through evapoconcentration. Irrigation return flows have also become a source of additional salts. At current salinity levels, the Refuge is legally prohibited from releasing any water due to water quality regulations. Currently, the only way salts can escape the Refuge is when winds blow salt crusts away, or when large floods push saline water from the Refuge downstream into Beaver Creek. Neither of these is a sustainable management strategy. The Refuge is currently embarking on a comprehensive planning process to determine how best to address its long-term management options. Quantifying the Refuge's federal reserved water rights in the proposed Compact is a first step toward ensuring the sustainability of the Refuge as positive rather than negative part of the local community.

PROPOSED COMPACT

The Compact recognizes federal reserved water rights for the Bowdoin National Wildlife Refuge from three sources – surface flows from Beaver Creek, surface flows that drain naturally into the Refuge (predominantly from Black Coulee), and ground water. These federal reserved rights are subordinated to all water rights existing under State law as of the Effective Date of the Compact, as well as to all future development excepted from State permitting law (such as small domestic and stock uses). The Refuge's federal reserved rights are also conditioned on the execution of a Memorandum of Understanding (still being developed) that will establish additional restrictions on the use of these rights to ensure that they do not exacerbate the Refuge's salt problems. In addition, the Water Court basin in which the Refuge is located (Basin 40M) was closed to new surface appropriations by the Legislature in 2001 as part of its ratification of the Ft. Belknap Water Rights Compact. Below is a summary of the key provisions of the Compact.

FEDERAL RESERVED WATER RIGHTS

Subject to the subordination requirement, the Compact assigns the FWS federal reserved water rights for:

- 24,714 acre-feet per year from Beaver Creek;
- Surface flows in Basin 40M that drain naturally into the Refuge;
- 223 acre-feet per year of ground water extracted from any source from wells located on the Refuge;
- 5300 acre-feet per year of deep ground water extracted from wells located on the Refuge that must be drilled into geologic formations dating to the Jurassic Period or older

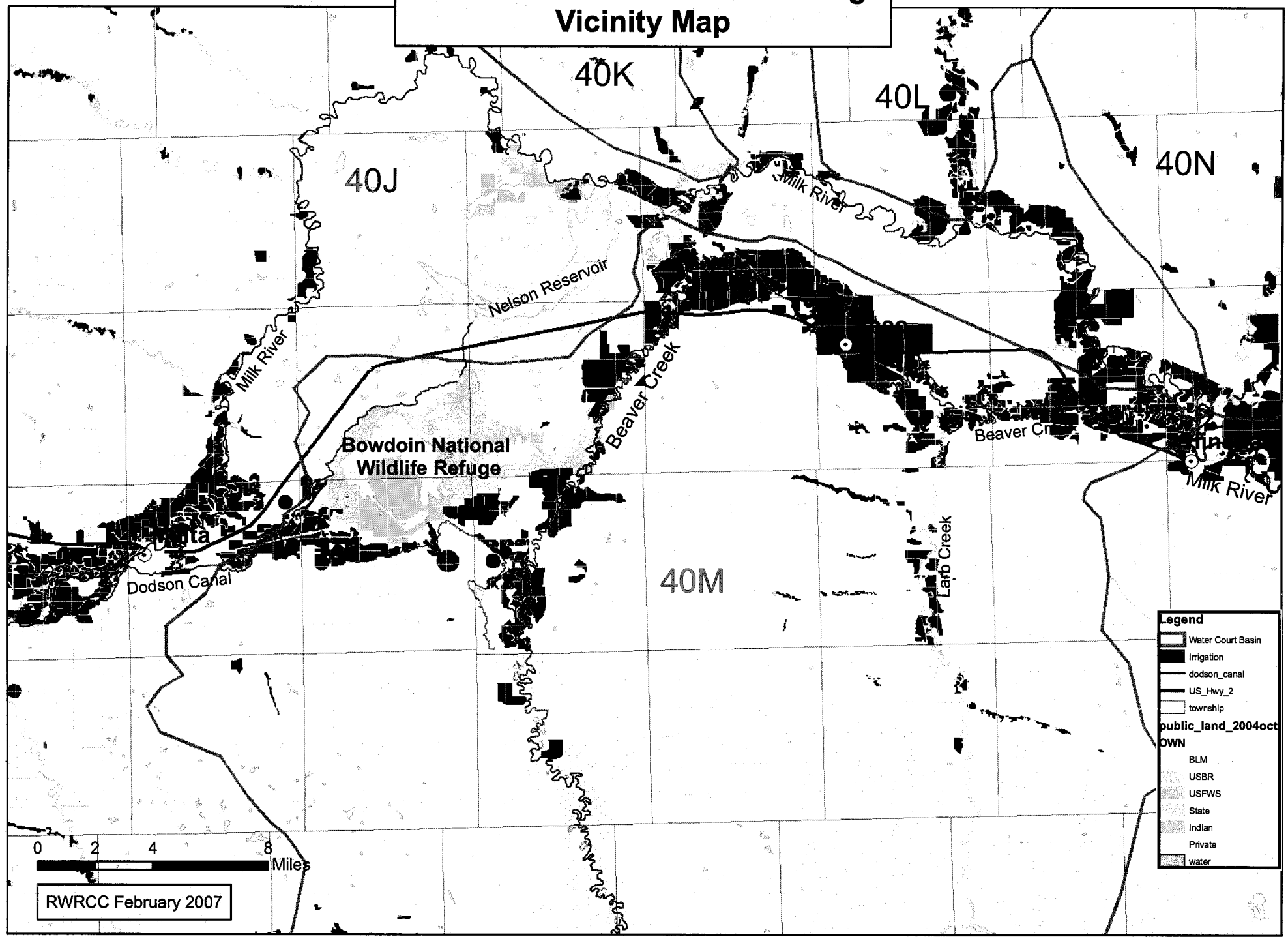
DEEP GROUND WATER

In the negotiations, FWS made a request for recognition of a significant ground water right. The RWRCC was concerned about the impacts recognition of such a right might have on both existing users and on those who might develop a ground water right in the future and yet risk be displaced by the FWS by virtue of the senior priority of an undeveloped federal reserved right. At the same time, the RWRCC recognized that the introduction of new (ground) water into a water short area would be of benefit to both the FWS and the off-Refuge community. The Compact resolves these issues by subordinating all the Refuge's water rights to existing uses and also by specifically providing that the bulk of FWS' ground water right may only be satisfied with water extracted from deep aquifers, sources in all probability large enough to be shared by FWS and others who might drill down into them. This depth requirement is defined in the Compact as a requirement that the FWS may only exercise the right by drilling wells into geologic formations of the Jurassic Period or older. Such formations are likely located at least 2600 feet beneath the Refuge's surface, and are relatively straightforward for a well driller to identify. The Compact also requires the FWS to comply with State permitting requirements (including water quality standards) prior to developing its deep ground water right.

PUBLIC INPUT

All negotiating sessions were noticed and open to the public. In addition, in 2004 RWRCC staff convened an *ad hoc* local advisory committee comprised of irrigators and other community members concerned about and/or affected by the salt problems at the Refuge for the purpose of soliciting feedback about proposed settlement concepts. Additional public meetings with interested individuals and groups have also been held. On February 6 and 7, 2007, RWRCC Commissioner Gene Etchart and RWRCC staff held two open houses in Malta, Montana, to visit with and receive input from interested members of the public about the proposed Compact. On February 21, 2007, the Milk River Joint Board of Control expressed concern that the Compact does not provide a comprehensive solution to the Refuge's salt problems. The Compact, however, ensures that the Refuge does not use its federal reserved water rights to exacerbate those problems, and instead incentivizes the FWS to resolve those problems in a way that causes no harm to downstream water users. Moreover, the ultimate solutions selected by the FWS will be subject to all applicable State and federal environmental laws, including the public process mandated by the National Environmental Policy Act.

Bowdoin National Wildlife Refuge
Vicinity Map



STRATIGRAPHIC COLUMN OF FORMATIONS OCCURING AT OR BELOW THE SURFACE NEAR BOWDOIN NWR

AGE	ERA	PERIOD	EPOCH	GEOLOGIC FORMATION	
PRESENT	CENOZOIC	QUATERNARY	HOLOCENE		
		TERTIARY	PLIOCENE		
			MIOCENE		
			OLIGOCENE		
			EOCENE		
			PALEOCENE		
65.5 million years ago				*GROUND SURFACE AT BOWDOIN*	
	MESOZOIC	CRETACEOUS	UPPER	CLAGGET SHALE	PIERRE SHALE
				EAGLE / GAMMON	
				NIOBRARA SHALE	
				CARLILE SHALE	COLORADO GROUP
				GREENHORN FORMATION	
			LOWER	BELLE FOURCHE SHALE	
				MOWRY SHALE	
				MUDDY-NEWCASTLE SANDSTONE	
				SKULL CREEK SHALE	
				BASAL COLORADO S.S., FALL RIVER S.S.	
				KOOTENAI	FUSON SHALE
145 mya					LAKOTA S.S.
		JURASSIC	UPPER	MORRISON FORMATION	
				SWIFT FORMATION	
				RIERDON FORMATION	
			MIDDLE	PIPER FORMATION	
199 mya			LOWER	NESSON FORMATION	
		TRIASSIC	UPPER	DISCONFORMITY	
			MIDDLE		
251 mya			LOWER	SPEARFISH FORMATION	
	PALEOZOIC	PERMIAN	UPPER		PINE SALT / MINNEKAHTA LS / OPECHE FM
290 mya			LOWER	DISCONFORMITY	
		PENNSYLVANIAN	UPPER		MINNELUSA FORMATION
			MIDDLE		
			LOWER		
		MISSISSIPPIAN	UPPER	HEATH FM / OTTER FORMATION	BIG SNOWY GROUP
				KIBBEY FORMATION	
			LOWER	CHARLES FORMATION / MISSION CANYON LIMESTONE / LODGEPOLE LIMESTONE	MADISON GROUP
354 mya				BAKKEN FORMATION	
		DEVONIAN	UPPER	THREE FORKS FM / BIRD BEAR NISKU FORMATION	
				DUPEROW FORMATION	
			MIDDLE	SOURIS RIVER FORMATION	
				DAWSON BAY FORMATION	
			LOWER	WINNIPEG-ELK POINT GROUPS	
417 mya				DISCONFORMITY	
		SILURIAN	UPPER		
			MIDDLE	INTERLAKE FORMATION	
443 mya			LOWER	DISCONFORMITY	
		ORDOVICIAN	UPPER	STONY MOUNTAIN FORMATION	BIG HORN GROUP
			MIDDLE	DISCONFORMITY	
				RED RIVER FM	
490 mya			LOWER	WINNIPEG FORMATION	
		CAMBRIAN	UPPER	DEADWOOD FORMATION	
			MIDDLE	DISCONFORMITY	
543 mya			LOWER		
1.7bya	PRECAMBRIAN		W X Y & Z	GRANITIC BASEMENT ROCKS	

RESERVED WATER RIGHTS COMPACT COMMISSION

BRIAN SCHWEITZER, GOVERNOR

CHRIS D. TWEETEN, CHAIRMAN

STATE OF MONTANA

Tara DePuy - Vice Chairman
Gene Etchart
Senator Jesse Laslovich
Senator Bill Tash

Representative Art Noonan
Lorents Grosfield
Steve Hughes
Representative Jack Ross

March 15, 2007

Re: Support for HB 717
Bowdoin National Wildlife Refuge/State of Montana Compact
Senate Fish & Game Committee

Dear Mr. Chairman and Members of the Committee:

My name is Gene Etchart and I am a Negotiating Team member for the Compact Commission's negotiations with the U.S. Fish & Wildlife Service, Bowdoin National Wildlife Refuge.

I have been a rancher in the Glasgow Irrigation District for 50 years or more, and my family has irrigated in the Milk River Valley for 80 years, so I am well familiar with this entire settlement.

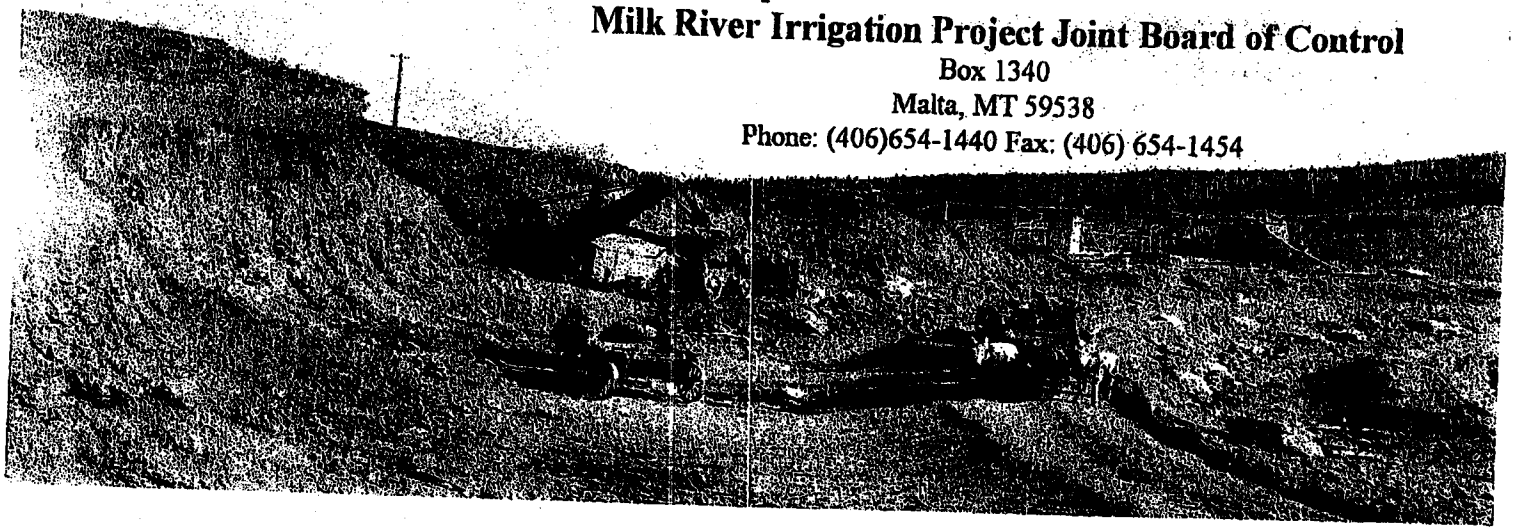
I would like to go on record as supporting HB 717, the Bowdoin Compact bill. I am comfortable with the Bowdoin compact and urge the Committee to approve this bill

Thank you.

Sincerely,

Gene Etchart (gs)

Gene Etchart
P.O. Box 429
Glasgow, MT 59230



Milk River Irrigation Project Joint Board of Control
Box 1340
Malta, MT 59538
Phone: (406)654-1440 Fax: (406) 654-1454

February 20, 2007

Montana Water Rights Compact Commission
Attention: Jay Wiener

Dear Jay,

You have attended our Joint Board meetings regularly to update us and we appreciate this, but the board feels that you came assuring us that there would be no compact until they cleaned up their saline problem. You have indicated that one of their suggestions to address this problem has been that they will release water from the refuge into Beaver Creek, which empties into the Milk River. This concerns us, especially the irrigators downstream on Beaver Creek and the Milk River. Many of our irrigators are paying thousands of dollars to clean up their feedlots that were too close to the Milk River and feel this release of water would be an ongoing thing and worse than the feedlot problem.

Today you are having a hearing, asking for this compact to be approved, with a Memorandum of Understanding attached, but the saline problem has not been resolved and you have indicated that the Refuge was not sure how they were going to address this problem. We feel you are going to the legislature with a compact, leaving the issues unresolved.

The Milk River Joint Board feels that at this point, we cannot support your proposed compact with the U.S. Bowdoin Fish and Wildlife Refuge.

Sincerely,

Wade Jones
JBOC Vice President